

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 16 OF 2020

(C/O Land Application No. 26 of 2019 of District Land and Housing Tribunal for Katavi)

(G. K. Rugalema)

YUDA NSWIMA APPELLANT

VERSUS

BERNADETA NSWIMA 1st RESPONDENT

ELIMINA NSWIMA 2nd RESPONDENT

KHABHEBHE KAFULUMA 3rd RESPONDENT

JUDGMENT

Date: 08 & 14/04/2022

NKWABI, J.:

The appellant was peeved by the decision of the District Land and Housing Tribunal for Katavi. The trial tribunal dismissed his application as it was of the unanimous finding that the appellant had failed to prove his application on the balance of probabilities required in civil litigation. It declared the 3rd respondent to be the lawful owner of the piece of land and awarded costs to the 3rd respondent while dismissing the application. He is now appealing against the judgment and decree of the trial tribunal. The piece of land in

question is sized 4 and 1/2 acres situated at Mnyakasi sub-village in Ikuba village.

The appellant has four grounds of appeal as follows:

1. That, the tribunal erred in law by providing judgment without considering opinion of assessors as per the law.
2. That the trial tribunal erred in law and fact by holding that the third respondent holds the suit land by virtue of adverse possession.
3. That, the trial tribunal erred in law by holding that the third respondent legally bought the suit land since 2006 while no documentary evidence regarding third respondent ownership of the suit land adduced to that effect.
4. That, the trial tribunal erred both in law by concluding that the third respondent legally owns 4 ½ acres relying only on third respondent testimony.

It is on those grounds of appeal that the appellant, prayed that the appeal be allowed, judgment and decree delivered by the District Land and Housing Tribunal for Katavi in Application No. 26 of 2019 be quashed and set aside

immediately, the respondent be condemned to pay the costs of the appeal and any other reliefs that this Honourable court may deem fit and just to grant.

In the joint reply to the petition of appeal, the respondents insisted that the trial tribunal's judgment is flawless. They prayed the appeal be dismissed in its entirety with costs and that the trial tribunal's decision be upheld.

Indeed, in the trial tribunal, the applicant was claiming for reliefs which are:

- i. Declaration that the 3rd respondent is not legal owner of the land in dispute.
- ii. Declaration that the 3rd respondent purchase of the land in dispute is void for want of legal procedures governing sale of land especially the land in dispute.
- iii. Vacant possession.
- iv. 3rd respondent to pay compensation for the destruction made by him and loss of applicant's family use of the said land in the suit land to the tune of 25,000,000/=.
- v. Costs of this application to be borne by the Respondents.

- vi. Any other relief this Honourable Tribunal may deem fit and just to grant.

At the hearing of the appeal, the appellant appeared in person, unrepresented. None of the respondents made appearance before this court to defend the appeal. In his submission the appellant argued that the District Land and Housing Tribunal failed to appreciate the evidence. He was not satisfied with the decision and the reliefs/orders that were issued. He further maintained that the doctrine of adverse possession too was illegally applied as there was no lapse of 12 years since the piece of land was sold. He prayed for justice.

I will start with the 4th complaint listed by the appellant to the effect that, the trial tribunal erred both in law by concluding that the third respondent legally owns 4 ½ acres relying only on third respondent's testimony. In my view, this has never been a sufficient ground of overturning a decision be it in criminal trials or civil trials, see for instance **Yohanis Msigwa V Republic**, [1990] TLR 148 (CAT):

"There was admittedly a lone eye witness in this case. Her evidence is not however detracted from because of that fact alone. As provided under s. 143 of the Evidence Act, of course no particular number of witnesses is required for the proof of any fact. What were important here were PW1's opportunity to see what she had claimed to have seen, and her credibility."

The ground of appeal has no merit, it is dismissed.

The next ground of appeal for my consideration and determination is the 1st one on the list of the appellant. That ground of appeal goes:-

That, the tribunal erred in law by providing judgment without considering opinion of assessors as per the law.

I have gone through the trial tribunal's record, I have found nothing to fault the trial tribunal's judgment on that. This is because, the trial court called upon the tribunal assessors to give their opinions. The same were given while duly written. The court assessors had the same opinion like the judgment of the chairman. So, the judgment is based on a unanimous

decision of the trial tribunal. In the circumstances the complaint lodged by the appellant has nothing in substance, it crumbles to the ground.

I will decide the 2nd and 3rd grounds of appeal together. They hinge on the credibility of witness in the sense that if the respondent was credible in his testimony, then the trial tribunal was justified to hold that the respondent was entitled to the piece of land based on adverse possession. The trial court was best placed to determine the credibility of witness. Since, it found that the respondent's version of evidence was credible, while that of the appellant was incredible, then I have no any reason to find otherwise. I would have interfered with the findings of the trial tribunal had I found that it had based its decision on any misdirection or non-direction. I do not see any. In any case, it was the appellant himself who gave corroborative evidence to the defence of the 3rd respondent when he replied the question of Kapama, the tribunal assessor that:

"The piece of land was sold by the 1st respondent to the 3rd respondent. The suit land was sold in 2006."

The application the basis of this appeal was filed in 2019 more than 12 years after the land was sold. I call into play the decision in **Zilaje v. Fembera [1972] HCD No. 3** Kisanga, Ag. J. held:

"I am, therefore, of the view that the appellant sat on her rights for too long, and that she has not given any sufficient ground which would warrant interference by this Court and accordingly the appeal is dismissed."

One has also to look at the reliefs claimed by the appellant in the trial tribunal. One of them is *declaration that the 3^d respondent purchase of the land in dispute is void for want of legal procedures governing sale of land especially the land in dispute*. The question is, did the appellant prove the purchase of the suit land by the respondent was irregular? This is because, he who alleges must prove as per **Miller v. Minister of Pensions [1937] 2 All ER 340** and **Karangirangi v, Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT). I have scanned the record of the trial tribunal, I find that the appellant did not prove that the purchase was irregular. It was also clear that the transaction was concluded in 2006 which is over 12 years to the

date the land dispute was lodged in the trial tribunal. In the premises, the respondent is entitled to non-disturbance to his title.

I also hasten to state that in our jurisdiction, it is mundane law that adverse possession can only be used as a shield and not a sword, see **Hon. Attorney General v. Mwahezi Mohamed** (as administrator of Estate of the late Dolly Maria Eustace) **& 3 others**, Civil Application No.314/12 of 2020, CAT (unreported) it was observed that:

"Apart from being from a foreign jurisdiction, the said decision based on Article 65 of the Indian Limitation Act, 1963 to opine that once the right, title or interest is acquired through adverse possession, it can be used as a sword by the plaintiff as well as a shield by the defendant. It is very unfortunate that in our country, we do not have a similar law."


It is, therefore, clear that in our jurisdiction, the respondent as being the respondent in the trial tribunal perfectly raised adverse possession as a shield. The complaint on adverse possession by the appellant is dismissed for lack of merit in the circumstances.

Based on the above deliberation, I find that the trial tribunal was excellently entitled to dismiss the application I uphold the decision in terms of **Ibrahim Ahmed v. Halima Guleti, [1968] HCD no. 76.** (PC), Cross J. In the circumstances I dismiss the appeal. I make no orders as to costs as the respondents did not enter appearance during the hearing.

It is so ordered.

DATED at **SUMBAWANGA** this 14th day of April, 2022.




J. F. NKWABI
JUDGE